IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 8006 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AKHILESH BALESHWAR JHA - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR VIRAL M PANDYA for Applicant(s) : 1,
MS MANISHA SHAH, APP for Respondent(s) : 1,
MR DC DAVE for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 26/07/2006

ORAL JUDGMENT

Rule. Ms. Manisha Shah, Ld. APP waives service of rule on behalf of opponent no. 1 and Mr. DC Dave, Ld. Advocate waives service of rule on behalf of original complainant.

2. This application is filed with a prayer to quash the order of the Ld. Metropolitan Magistrate dated 12/5/2006 by which the bail granted in favour of the applicant has been cancelled.

3. I have perused the record of this application. It appears that the applicant was granted bail by this Court by order dated 10/6/1998 on certain terms and conditions. One of the terms was to furnish address of his residence at the time of execution of the bond and the applicant was directed not to change it without prior permission of this Court. However, it appears that later on the applicant without obtaining the permission of this Court, changed the residence. As a result of that, the summons issued by the trial Court could not be served on him and he did not remain present. In view of the same, application was submitted by the original complainant, who has appeared before this Court in this matter through Mr. DC Dave, Ld. Advocate, being Special Criminal Application No. 133 of 2006. In the said application prayer was made for direction on the Ld. Metropolitan Magistrate for issuance of non-bailable warrant against the present applicant since he could not respond to the summons of the trial Court. It further appears that the Ld. Magistrate by order dated 12/5/2006 cancelled the bail granted in favour of the applicant. It is the said order which is now under challenge before this Court.

4. I have heard Mr. VM Pandya, ld. Advocate for the applicant, Mr. DC Dave, Ld. Advocate for the original complainant and Ms. Manisha Shah, Ld. APP for the opponent – State. I have also perused the record of this application. It is stated in the application and it is also submitted by the learned advocate for the applicant that on account of his transfer at New Delhi, he did not receive the summons and he could not attend the Court. This, however, is not proper since before changing the residence the applicant was required to

obtain permission of this Court. However, considering the fact that the applicant has assured to this Court that such default will not be made in future and he will regularly remain present before the trial Court, there is no need to send him again to the judicial custody, but appropriate conditions can be imposed against him, which are as under :-

i) The applicant shall immediately furnish his present residential address to the I O, to this Court and also to the trial Court,

ii) The applicant shall not change the said residence without obtaining prior permission of this Court,

iii) The applicant shall not commit any default in remaining present before the concerned trial Court unless there are compelling circumstances for which the applicant shall present application through his advocate seeking exemption from personal appearance on that day before the Court.

iv) Any breach of these conditions shall automatically result into cancellation of bail.

In view of the above, the application is partly allowed. The impugned order of the Ld. Metropolitan Magistrate is quashed and set aside. Rule is made absolute accordingly. Direct service is permitted.

[Akshay H Mehta, J.]

* Pansala.